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OFFICE OF PETITIONS

In re Application of :
John M. Raterman et al :
Application No. 10/698,312 : DECISION ON PETITION
Filed: October 31, 2003 : UNDER 37 CFR 1.313(c) (2)
Attorney Docket No. NOR-1127 :

This is a decision on the petition, filed August 24, 2005, under 37 CFR 1.313(c) (2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**, *nunc pro tunc*.

It is noted that, although the petition to withdraw from issue had not been acted upon by the appropriate deciding official of the U.S. Patent and Trademark Office, the Technology Center processed the request for continued examination (RCE) under 37 CFR 1.114 and subsequently issued a new Notice of Allowance and Fee(s) Due and Notice of Allowability on December 28, 2005. Where an issue fee has been paid and an RCE is subsequently filed, the RCE is not a proper filing unless a petition to withdraw from issue has been granted. Therefore, the examiner was without authority to act further in the case absent a grantable petition withdrawing the application from issue. Nevertheless, in view of this decision on petition, the RCE is now considered a proper filing and the actions of the examiner taken thereafter are hereby ratified.

The issue fee in reply to the second Notice of Allowance and Fee(s) Due mailed December 28, 2005 was received on March 9, 2006. Accordingly, this matter is being referred to Publishing Division for taking such further action as the nature of the case requires.

Karen Creasy
Karen Creasy
Petitions Examiner
Office of Petitions